

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. S2-4:18CR1007AGF(JMB)
)
)
SHAUWN NETTLES,)
)
Defendant.)

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Memorandum in Support of Defendant's Motion to Suppress Evidence, which the Magistrate Judge has construed as a renewed Motion to Suppress Evidence. Pursuant to 28 U.S.C. § 636(b), the motion was referred to United States Magistrate Judge John M. Bodenhausen. Defendant is proceeding *pro se*, with standby counsel.

The procedural history in this matter is complex and has been restated in prior Orders. Briefly, Defendant filed a motion to dismiss the second superseding indictment which was returned in this matter on August 10, 2022. Magistrate Judge Bodenhausen issued a Report and Recommendation recommending Defendant's motion be denied, which the undersigned adopted. While that motion to dismiss was pending, the government discovered a previously unknown affidavit of a witness in this matter, and as a result, the Court re-opened the evidentiary hearing for the limited purpose of allowing Defendant to cross-examine that witness. An evidentiary hearing was held on November

1, 2022, and Officer Quincy Smith testified and was cross-examined. On January 27, 2023, Magistrate Judge Bodenhausen filed a Report and Recommendation [Doc. No. 218; the “Second R&R”], recommending that the Court deny Defendant’s renewed motion to suppress evidence [Doc. No. 204]. Defendant has not filed objections to the Second R&R, and the time to do so has passed.

Although Defendant has not filed objections, the Court reviewed the matter *de novo*, in light of Defendant’s *pro se* status. After careful consideration of the record, and in light of Defendant’s failure to file objections, the Court will adopt and sustain the thorough reasoning of the Magistrate Judge set forth in support of his Second R&R issued on January 27, 2023. In summary, for the reasons detailed in the Magistrate Judge’s Second R&R, the Court agrees that Defendant is not entitled to relief based on the earlier failure to disclose the probable cause affidavit. It does not contain exculpatory evidence, and while it should have been disclosed earlier under *Jencks*, any prejudice was cured by reopening the hearing and permitting Defendant to cross-examine the witness. Second, the Court agrees, for the reasons stated in both the initial Report and Recommendation and the Second R&R, that the officer had probable cause to stop the vehicle in light of the traffic violation, and was thereafter justified in searching the vehicle. The Court also agrees that Defendant has waived any inconsistency between the officer’s testimony at the initial hearing and his report of the incident – which was timely disclosed before the initial hearing. Further, any inconsistency with respect to the timing of when Defendant was placed in handcuffs, is not material. Finally, any failure

to comply with the St. Louis Metropolitan Police Department Standard Operating Procedure SO-9-09 does not provide evidence of a violation of any relevant federal statutory or constitutional principle, and therefore fails to provide any basis for suppression.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [Doc. No. 218] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that Defendant's renewed Motion to Suppress Evidence [Doc. No. 204] be **DENIED**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mail a copy of this Report & Recommendation to Defendant.

IT IS FINALLY ORDERED that this matter is scheduled for a Status Conference on **Wednesday, March 8, 2023 at 11:00 a.m.** This is a **three week** docket.

Audrey G. Fleissig
AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of March, 2023.